



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

MNSD, MNDC, and FF

### Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, for a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that sometime in March of 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On May 23, 2014 the Landlord submitted documents to the Residential Tenancy Branch which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were served to the Tenant by registered mail on May 22, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Tenant entitled to compensation for an unlawful rent increase?

Is the Tenant entitled to the return of security deposit?

### Background and Evidence

The Landlord and the Tenant agree:

- this tenancy began in 2012

- when the tenancy began the Tenant agreed to pay monthly rent of \$700.00
- at some point in the tenancy the Landlord asked the Tenant to pay an additional \$50.00 per month in rent
- the Tenant verbally agreed to pay the rent increase
- the Tenant did not agree, in writing, to pay the \$50.00 increase
- a security deposit of \$350.00 was paid
- the Tenant did not authorize the Landlord to retain the security deposit
- the Landlord did not return any portion of the security deposit
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that he paid the additional \$50.00 in rent for September, October, and November of 2013. He contends the rent increase was not in accordance with the *Residential Tenancy Act (Act)* and he is seeking a rent refund of \$150.00. The Landlord stated that she does not recall for which months the additional rent was paid.

The Tenant stated the tenancy ended on November 30, 2013 and the Landlord stated it end on November 15, 2013. They agree rent was paid for November. The Tenant stated that he mailed the Landlord a letter which contained his forwarding address on January 27, 2014. The Landlord stated that she received the forwarding address within a few days of January 27, 2014.

### Analysis

Section 43(1) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the Residential Tenancy Regulations; an amount ordered by the director on application under section 43(3) of the *Act*, or an amount agreed to by the tenant, in writing. On the basis of the undisputed evidence, I find that the Landlord increased the rent from \$700.00 to \$750.00, without written authority from the Residential Tenancy Branch or written agreement from the Tenant. This is an increase of over 7%, which is far greater than permitted by the Regulations in 2013.

As the \$50.00 rent increase did not comply with section 43(1) of the *Act*, I find that the Tenant is entitled to recover the entire rent increase that he paid. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant paid the additional rent for September, October, and November of 2013. I therefore find that he is entitled to a rent refund of \$150.00.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with

section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

I find that the Tenant's application has merit and that he is entitled to recover the fee for filing an Application for Dispute Resolution.

### Conclusion

The Tenant has established a monetary claim of \$900.00, which is comprised of double the \$350.00 security deposit, a rent refund of \$150.00, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 20, 2014

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Residential Tenancy Branch

